

EXHIBIT 21

(To be filed under seal)

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Attorneys for United States

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

No.

UNITED STATES' INSTRUCTIONS

FILED UNDER SEAL

IN THE MATTER OF THE
APPLICATION OF THE UNITED
STATES FOR AN ORDER
AUTHORIZING THE INTERCEPTION
OF WIRE COMMUNICATIONS ON
CELLULAR TELEPHONES [REDACTED]
[REDACTED] AND [REDACTED], AND THE
OBTAINING OF GPS PRECISE
LOCATION INFORMATION FOR
THE SAME TELEPHONES

1
2 **TO ALL SPECIAL AGENTS**, law enforcement officers, and other personnel under the
3 supervision of law enforcement personnel who are participating in the monitoring of the
4 conversations involving the interception of wire communications over the following telephones
5 (hereafter the "Target Telephones"):

6 **Target Telephone 1**

7 Suspected primary user: Keith JACKSON

Call Number:

8 IMSI/IMEI:

Provider:

Subscriber:

9 San Francisco, CA 94109

10 **Target Telephone 2**

11 Suspected primary user: Senator Leland YEE

12 Call Number:

13 IMEI:

Provider:

Subscriber:

14 San Francisco, CA 94121

15 The anticipated authorization for interception is for certain wire communications over the
16 Target Telephones involving the following persons:
17

18 Keith JACKSON ("JACKSON")

19 Senator Leland YEE ("YEE")

20 Brandon JACKSON ("Brandon JACKSON")

21 Marlon SULLIVAN ("SULLIVAN")

22 and Kwok Cheung CHOW, a/k/a Raymond Chow, a/k/a Shrimp Boy, a/k/a Ha Jai ("CHOW");

1 and others whose identities are presently unknown (collectively, the "Target Interceptees"), for a
2 thirty (30) day period, pursuant to 18 U.S.C. § 2518.

3

4 INTRODUCTION

5

6 1. Before participating in any interception, you must

7 a. attend the minimization meeting on November 13, 2012, or listen to the recording
of the instructions given at that meeting,

8 b. carefully read the Application, Affidavit, and Court Order that are expected to be
signed by the Court today, November 13, 2012, authorizing the interception of
wire communications;

9 c. carefully read these Instructions; and

10 d. after completing the above steps (a-c), **but before you begin monitoring**, sign the
11 attached certification.

12 A copy of the signed Application, Affidavit, Order, and Instructions will be posted in the wire
13 room at all times during the operation of the surveillance. No one should be in the wire room
14 without completing this certification. Moreover, only individuals involved in this wiretap should
15 be listening to conversations taking place over the **Target Telephones** as they are being
16 monitored. Finally, information received from this wiretap should not be disclosed to anyone
17 outside of this investigation.

18 2. Your task is to carry out the Court's Order, intercepting only those conversations
19 and activities that are specifically designated, while minimizing the interception of non-pertinent
20 or privileged communications and activities.

21 3. The law makes no distinction between intercepting, listening to, overhearing, or
22 monitoring (hereinafter "intercepting") a conversation. Courts generally regard intercepting wire
23 communications through the use of electronic surveillance like any other search warrant: it
24 authorizes a limited search and a limited seizure of evidence. Any intercepted conversation,
25 whether or not it is recorded or otherwise preserved, is "seized" and subject to the limitations of
26 the Court's Order.

1 4. The Court's Order will not allow you to freely intercept and listen to every
2 communication carried on over the Target Telephones. Minimization requires that the agents
3 make a good faith determination of whether any conversation is relevant to those illegal activities
4 described below. If you listened to every conversation occurring over the Target Telephones,
5 the fruits of your investigation could be suppressed unless all the conversations were pertinent
6 and were not privileged.

7 5. Anytime a conversation or any part thereof is monitored, it must be recorded. To
8 ensure that the Court can later review exactly what was intercepted, where and when
9 minimization took place, and whether or not the monitoring was conducted in accordance with
10 its Order, the interception equipment has been wired in such a way as to interconnect the
11 recording and monitoring functions. You will not be able to monitor any communication without
12 it being automatically and simultaneously recorded. Conversely, you will not be able to record
13 any communication without it being automatically and simultaneously monitored. A single
14 switch will activate both interception and recording so that when you tie into a telephone line to
15 monitor a communication, you will have also activated the recorder. When you shut off the
16 switch to end your interception, the recording will cease at the same time. If for some reason we
17 must use machines that have a separate monitor switch, such switch is not to be activated unless
18 the machine is recording.

19 6. We have to be able to demonstrate that we neither listened to nor recorded
20 communications that we had no right to intercept. The original recording is our evidence of this.
21 For this reason, **no machine is to be left unattended or on automatic.**

22 7. However, if at any time a machine malfunctions or it becomes necessary to install
23 another CD while conversations are being intercepted, monitoring is permissible while the
24 situation is being remedied. Be certain to report any overheard or overseen but non-recorded
25 conversations in the interception log as accurately as possible, and to note the time, duration, and
26 nature of the malfunction or other reason for non-recording. Also, immediately inform the
27 Supervising Agent and the Supervising Attorney about the situation. In this case, your notes will
28 serve the function of the recording and must be carefully preserved.

COMMUNICATIONS WHICH MAY BE MONITORED

8. We have obtained authority from the Court to intercept certain wire communications of the Target Interceptees which occur over the Target Telephones. The communications we are authorized to intercept are those that relate to the following offenses (hereinafter the "Target Offenses"):

- (a) mail fraud and wire fraud, in violation of Title 18, United States Code, Sections 1341, 1343, and 1346;
- (b) money laundering, in violation of Title 18, United States Code, Section 1956;
- (c) violations of the Travel Act, in violation of Title 18, United States Code, Section 1952;
- (d) conspiracy to distribute controlled substances, in violation of Title 21, United States Code, Section 846;
- (e) distribution of controlled substances, in violation of Title 21, United States Code, Section 841; and
- (f) use of communication facility to commit or facilitate narcotics offense, in violation of Title 21, United States Code, Section 843(b).

We are permitted by the Court's Order to intercept these wire communications to achieve the goals of this investigation. These goals are as follows, to identify:

- (i) the nature, extent and methods of operation of all of the Target Subjects' scheme to commit the Target Offenses;
- (ii) the identity of all of the Target Subjects' accomplices, aiders and abettors, co-conspirators and participants in their commission of the Target Offenses;
- (iii) the receipt and distribution of all contraband and money involved in the Target Offenses;
- (iv) the locations and items used in furtherance of the Target Offenses;
- (v) the existence and locations of all records relating to the Target Offenses;
- (vi) the location and source of all resources used to finance the Target Offenses; and
- (vii) the location and disposition of all of the proceeds from the Target Offenses.

9. You should listen to the beginning of each conversation for as long as, and only for as long as, it is necessary for you to determine if one of the persons named above is a participant and the conversation is pertinent to the subjects and activities targeted by the Court Order, but in any case, usually no longer than a few minutes unless the conversation is pertinent, that is, the conversation is within the scope of our authorization and not privileged. Title 18, United States Code, Section 2518(5) requires that interception be done "in such a way as to minimize the interception of communications not otherwise subject to interception." If you determine that the conversation is not a criminal conversation, or is privileged, stop monitoring and begin minimization. If you determine that the communication is pertinent, you will continue the interception.

MINIMIZATION / SPOT-MONITORING

10. If you determine during the initial few minutes that a conversation does not fall within the categories specified in the Order, that is, it is not pertinent, or that the conversation falls within one of the privileges discussed below, the recording and listening devices must be turned off.

11. However, it is possible that some time after the machine is turned off, the conversation will regard the illegal activities listed herein, or that the conversation will cease being of a privileged nature. To guard against missing a pertinent conversation, spot monitor, that is, check by activating the monitor and record switch periodically to determine if the nature of the conversation has changed so that it has become pertinent. Listen, observe, and record for a brief period, only as long as is necessary to determine whether the conversation has become pertinent. This procedure of spot-monitoring may be continued throughout the conversation, but should be kept to the minimum necessary to ascertain whether the conversation has changed. If, during this brief period of spot-monitoring a pertinent conversation is intercepted, keep listening and recording. If a non-pertinent or privileged conversation is intercepted, turn off the machine. You must record the conversations which are overheard even during the brief periods of interception that occur during the spot monitoring.

1 12. Continue the spot monitoring as the circumstances dictate. In determining
2 whether and when to continue spot interceptions, use your best judgment and the circumstances
3 known to you, such as the identity of the parties to the conversation, the nature of their
4 relationship and past conduct, the presence of any code words, their known current activity, etc.
5 Here are some guidelines to help you do this.

6 a. Patterns of Innocence:

7 If after several days of interception, we have consistently found that
8 communications involving a Target Interceppee and a particular person are
9 innocent, non-pertinent, or non-crime related, then a pattern of innocence
10 exists and such conversations should be minimized once the parties are
11 identified but such conversations should also occasionally be spot-
12 monitored as described above.

13 b. Patterns of Involvement:

14 On the other hand, if one or more of the parties to a conversation has been,
15 through the course of the investigation, identified as a co-conspirator,
16 accomplice, agent, or victim of the Target Interceptees or criminal
17 activities, and the communication is not privileged, a pattern of
18 involvement in the illegal activity is established. Once the pattern of
19 involvement has been set, you should let the supervising agent or attorney
20 know, and have them review the need for minimization when the involved
21 party has been identified as a participant to any conversation.

22 **COMMUNICATIONS IN FOREIGN LANGUAGES**

23 13. We believe that some of the communications you monitor may be in a foreign
24 language. When communications in a foreign language are intercepted, we are under exactly the
25 same obligation concerning minimization regardless of whether or not a particular government
26 agent speaks or understands the language being used. If you determine that the communication is
27 in a language in which you are not fluent, immediately notify the supervising agent.

28 14. Because it appears that conversations in Cantonese may be intercepted, efforts
29 have been made to obtain Cantonese-speaking monitors to assist in the surveillance. If a
30 Cantonese translator is reasonably unavailable to minimize communications on the spot, all such

1 conversations should be intercepted and recorded in their entirety. These conversations must
2 then be minimized as soon as practicable by a translator. Specific instructions are contained in
3 both the Application and the Court Order.

4 EVIDENCE OF OTHER CRIMES

5 15. We do not have authorization to intercept communications concerning the
6 commission or planning of crimes other than those defined above as illegal activities. Our
7 authorization is limited to the interception of conversations between our named Target
8 Interceptees and co-conspirators, accomplices, agents, or victims, concerning the illegal activities
9 defined above. In the event, however, that while you are listening to a pertinent conversation or
10 attempting to determine whether a given conversation is pertinent, you intercept a conversation
11 involving another serious crime – for example, assault, robbery, homicide, or hijacking – listen to
12 and record that conversation. It is similar to the “plain view” doctrine which applies in the
13 execution of search warrants. If you do monitor such a conversation, notify the Supervising
14 Agent and Supervising Attorney immediately.

15 CONVERSATIONS IN WHICH OUR NAMED
16 INTERCEPTEES ARE NOT PARTICIPANTS

17 16. No interception is to be conducted unless it is determined through video
18 surveillance, physical surveillance, voice identification, or otherwise that at least one of the
19 named Target Interceptees or any of their co-conspirators, once identified, are a party to the
20 conversation for which authorization has been obtained. We have authority to intercept pertinent
21 conversations in which our Target Interceptees are not participants because we do not know and
22 have not identified all the people who use in connection with the illegal activities. For example,
23 if Keith JACKSON and Senator Leland YEE are overheard stating that a third person paying a
24 bribe will be calling over a **Target Telephone** in a moment, and they plan to hand the **Target**
25 **Telephone** to a new individual who will assist in funneling the bribe to Senator YEE’s accounts,
26 and then the two new individuals begin a conversation over the **Target Telephone** while
27 JACKSON and Senator YEE no longer participate in the conversation, you are authorized to
28 continue to monitor the conversation of the now identified co-conspirators. However, you are to

1 notify the Supervising Agent and Supervising Attorney so that appropriate modifications can be
2 made in the applications and orders. You must be extremely careful, however, when intercepting
3 conversations in which a named Target Interceptee is not a participant, to avoid intercepting
4 non-pertinent conversations. It is important that you attempt to identify the named interceptees
5 of this interception and, as well, to identify other individuals who may use the Target
6 Telephones so that the patterns of innocence and involvement mentioned earlier can be
7 recognized and our monitoring may be adjusted in accordance with them.

8 **IDENTIFICATION OF NEW SUBJECTS**

9 17. One of our stated and authorized purposes in conducting this investigation is to
10 identify our Target Interceptees' co-conspirators, accomplices, agents or victims involved in the
11 Target Offenses. As the surveillance progresses, it is likely that you will be able to identify new
12 subjects who function as co-conspirators, accomplices, agents, or victims in the Target Offenses.
13 As soon as any such individual is identified, the Supervising Agent and Supervising Attorney
14 should be notified immediately.

15 **PRIVILEGED COMMUNICATIONS**

16 18. There are special restrictions relating to any communications which would fall
17 under any legal privilege. The general categories of privileged communications are discussed
18 below. If you determine that a conversation is privileged, stop intercepting immediately, but
19 spot-monitor to see if the conversation remains privileged. If you decide that a conversation is
20 not privileged, treat it as a regular interception and apply the above minimization instructions. If
21 you mistakenly overhear a privileged conversation, you should notify the Supervising Agent and
22 Supervising Attorney. You should not pass on the content of the conversation, only pass on the
23 circumstances of the mistaken interception.

24 a. **Attorney-Client**

25 It is unknown at this time whether any of the subjects are currently being
26 represented by an attorney. If at any time during the investigation we learn the
27 name of any attorney retained by any possible subject, these names are to be
28 posted in a conspicuous place in the listening post. Any time that it is determined

1 that an attorney is participating in an intercepted conversation over the Target
2 Telephones, call the Supervising Agent and Supervising Attorney immediately.
3 If the conversation involves legal consultation of any kind or any sort of
4 discussion of legal strategy, immediately turn off the monitor and stop recording.
5 However, do not summarize this conversation in the log and, again, you should
6 only pass on the circumstances of the mistaken interception, not the content of the
7 conversation. Rather, you should write the content of what you mistakenly
8 overheard, not in the log, but on a separate piece of paper titled "Attorney
9 Communication," and give this paper, in a sealed envelope, to the Supervising
10 Agent who, in turn, is to give it to the Supervising Attorney.

11 b. Parishioner-Clergyman

12 All communications between a parishioner and his or her clergyman are to be
13 considered privileged. We could not obtain an interception order to listen to a
14 person confessing to a priest in a confessional booth; similarly, we must not
15 intercept a subject discuss his or her personal, financial, or legal problems with his
16 or her priest, minister, rabbi, etc. Thus, if such a communication is intercepted
17 over the Target Telephones, turn off the monitor and stop recording. Then call
18 the supervising agent and attorney. However unlikely, if the conversation
19 reasonably leads you to conclude that the clergyman is acting as a co-conspirator
20 or accomplice, the conversation is not privileged and may be monitored in full.
21

22 c. Husband-Wife

23 There is also a privilege concerning communications between spouses. You are to
24 discontinue monitoring if you determine that you are intercepting a personal
25 communication over the Target Telephones solely between a husband and wife.
26 If it appears that a third person is present during the communication, however, the
27 communication is not privileged. Also, if the communication does not deal with
28

1 private matters between a husband and wife, but instead with ongoing (as opposed
2 to past) violations of law, it is not a privileged communication.

3
4 d. Physician-Patient

5 Conversations between a physician and patient are to be considered privileged.
6 You are to stop intercepting a communication once you determine that it is a
7 communication between a physician and patient that arises out of their
8 professional relationship. Then notify the supervising agent and attorney. Again,
9 if you decide that the doctor is acting as a co-conspirator, or accomplice, the
10 conversation is to be treated like any other intercepted communication.

11
12 e. Psychiatrist-Patient

13 Conversations between a physician, psychiatrist, psychotherapist, psychologist,
14 and even a social workers functioning in that capacity, are to be considered
15 privileged.

16 You are to stop intercepting a communication once you determine that it is a
17 communication between a psychiatrist and patient that arises out of their
18 professional relationship. Then notify the supervising agent and attorney. Again,
19 if you decide that the psychiatrist is acting as a co-conspirator, or accomplice, the
20 conversation is to be treated like any other intercepted communication.

21
22 f. Other Relationships

23 No legal privilege exists with regard to communications between a subject and his
24 or her lover, unless they are married. Similarly, no legal privilege exists with
25 regard to conversations between a subject and his or her children or relatives.
26 Keep in mind, however, that our function is to intercept and record conversations
27 related to illegal activities, not indiscriminately to invade the privacy of our

1 subjects and others. In general, follow the spot-monitoring rules outlined above,
2 if conversations of this type are intercepted.

3
4 NON-PRIVILEGED COMMUNICATIONS

5
6 19. Even if a communication does not fall within one of the privileged categories
7 discussed above, that does not automatically mean that we have a right to listen to and record the
8 entire communication. We have authority to intercept only those communications which pertain
9 to the Target Offenses of the named Interceptees and their unknown associates. Always
10 remember that eventually a court may have to decide whether we executed the interception Order
11 in the manner specified by the Order. The standard which a Court is likely to apply in
12 determining whether the interception was properly carried out is simple: Did the agents make a
13 good faith effort to comply with the restrictions and requirements of the wiretap Order?

14 ". . . a court should not admit evidence derived from an electronic
15 surveillance order unless, after reviewing the conduct of the
16 monitoring agents, it is left with the conviction that on the whole
the agents have shown high regard for the right of privacy and have
done all they reasonably could to avoid unnecessary intrusion."

17 *United States v. Tortorello*, 480 F.2d 764, 784 (2d Cir. 1973).

18 ". . . the monitoring agent and thereafter the reviewing court must
19 consider many factors, including the precise relationship of the
20 parties, the length of the relationship, the number of
[conversations] between the parties, the state of the investigation,
activities, at the time, of the alleged conspirator who is a party to
the conversation, and the content of the conversations to determine
21 the appropriate degree of minimization."

22 *United States v. Falcone*, 364 F. Supp. 877, 884 (D.N.J. 1973)

23 20. You must be alert to the possibility that you may intercept conversations in which
24 defendants in ongoing criminal prosecutions are discussing the facts of their cases. You are only
25 entitled to intercept conversations about ongoing criminal cases if they are pertinent to ongoing
26 criminal activity (*i.e.*, criminal conversations) and non-privileged – just as you may intercept any
27 other pertinent, non-privileged conversation. You are not to monitor and record any discussion
28 concerning a legal defense or strategy that may be discussed by a subject or other interceptee.

1 21. However, you should also realize that we must be very careful how we use any
2 information which we obtain from such conversation. Specifically, such information may not be
3 used against a particular defendant in his pending criminal case either directly (as evidence) or
4 indirectly (as leads to obtain evidence). None of the subjects are currently under federal
5 indictment; however, should you intercept a conversation in which a defendant is discussing the
6 facts of a pending criminal case, call the Supervising Agent and Supervising Attorney and advise
7 them of the nature and substance of the conversation. Do not, under any circumstances,
8 communicate the substance of the conversation to any prosecutor, agent, police officer, or other
9 government officer who has any connection with the prosecution or investigation of that
10 defendant's pending criminal case.

SEALING

12 22. You should be aware that the federal statutes which empower District Courts to
13 issue interception orders also place upon us the obligation to record intercepted conversations in
14 a manner that will protect the recordings from editing or other alterations. It is our responsibility
15 to make available to the judge who issues the interception order all of the recordings of the
16 intercepted conversations which are then to be placed under judicial seal. Failure to carry out
17 these responsibilities may result in the suppression of the recordings as evidence. The
18 Supervising Agent has adopted procedures to preserve the chain of custody of the original
19 recordings and to prepare accurate duplicates. The Supervising Agent will instruct all
20 monitoring agents according to those procedures.

RECORD KEEPING

22 23. Agents or monitors are to prepare abstracts or summaries of each conversation at
23 the time of interception. The abstracts or summaries are to be included in the monitoring
24 logs/line sheets. If the conversation was not entirely recorded, an appropriate notation should be
25 made indicating the incomplete nature of the conversation (e.g., interception discontinued) and
26 why the full communication was not intercepted (e.g., non-pertinent or privileged). Where the
27 exact words used by the participants are important, a transcript of that portion of the conversation

should be prepared as soon as possible thereafter and delivered to the Supervising Agent shortly thereafter.

24. The line sheets/logs are to be a reflection of all activity occurring at the listening post which concerns the intercepted conversations, as well as the equipment itself (e.g., malfunction of recorder, no overheard conversations). You will ultimately use these logs to explain actions you took with respect to particular communications. Therefore, it is vitally important that you describe/identify:

- a. the parties of each conversation (name or UM, UF, etc.);
- b. the beginning and ending time of any conversations (in order to avoid confusion regarding "A.M." and "P.M.", please use "military time" - that is, a continuous 24-hour period of time ranging from 0000 to 2400);
- c. whether or not the conversation is pertinent; and
- d. if the conversation is not pertinent, indicate whether or not it was minimized and whether spot-monitoring used.
- e. In the area reserved for "synopsis":
 - (i) if a conversation is privileged, indicate the basis for your determination and type of privileged involved.
 - (ii) provide summary of conversation (e.g., discussed cocaine delivery, talked about price and place of delivery). If only part of the conversation was monitored, indicate why this was done. If you can identify the speakers by name, please do so. If you believe you know the identify of the speakers, but are not positive, write the name followed by a question mark.

LENGTH OF INTERCEPTION

26. The Court authorized the interception of wire communications over the Target Telephones for a period of 30 days. The Court's Order is expected to be signed today, November 13, 2012, and interception is anticipated to start tomorrow, November 14, 2012. If

1 interception indeed begins on November 14, 2012, then interception must end on December 14,
2 2012. If interception does not begin on November 14, 2012, the ending date will be recalculated.
3 In any event, no communications should be intercepted after the 30 day period without a renewal
4 and extension of the Court's Order.

5 QUESTIONS

6 27. If anything appears to be developing suddenly, or if a critical question arises,
7 please call me, AUSA William Frentzen at [REDACTED] (desk) or [REDACTED] (mobile).
8 You may also call AUSA S. Waqar Hasib, at [REDACTED] (desk) or [REDACTED] (mobile),
9 or AUSA Susan Badger at [REDACTED] or [REDACTED] (mobile). These numbers
10 will be posted in the wire room. Do not hesitate to call any of us at any time of the day or night.

11 DATED: November 13, 2012

12 MELINDA HAAG
13 United States Attorney

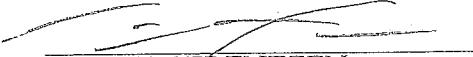
14 
15 WILLIAM FRENTZEN
16 Assistant United States Attorney

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(To be filed under seal)

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4 Chief, Criminal Division

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16 Attorneys for United States

17 UNITED STATES DISTRICT COURT
18 NORTHERN DISTRICT OF CALIFORNIA
19 SAN FRANCISCO DIVISION

20 No.

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31 FOR THE SAME TELEPHONES }

TO ALL SPECIAL AGENTS, law enforcement officers, and other personnel under the supervision of law enforcement personnel who are participating in the monitoring of the conversations involving the interception of wire communications over the following telephone (hereafter the “Target Telephone”):

Target Telephone 1

Suspected primary user:

Keith JACKSON

Call Number:

IMSI/IMEI:

Provider:

Subscriber:

Journal of Oral Rehabilitation 2003 30: 103–109

San Francisco, CA 94109

The anticipated authorization for interception is for certain wire communications over the
Target Telephones involving the following persons:

Keith JACKSON ("JACKSON")

California State Senator Leland YEE ("YEE")

Brandon JACKSON (“Brandon JACKSON”)

Marlon SULLIVAN ("SULLIVAN")

Kwok Cheung CHOW, a/k/a Raymond Chow, a/k/a Shrimp Boy, a/k/a Ha Jai ("CHOW")

1 and others whose identities are presently unknown (collectively, the "Target Interceptees"), for a
2 thirty (30) day period, pursuant to 18 U.S.C. § 2518.

3

4

INTRODUCTION

5

1. Before participating in any interception, you must
 - 6 a. attend the minimization meeting on February 8, 2013, or listen to the recording of
7 the instructions given at that meeting,
 - 8 b. carefully read the Application, Affidavit, and Court Order that are expected to be
9 signed by the Court today, February 8, 2013, authorizing the interception of wire
communications;
 - 10 c. carefully read these Instructions; and
 - 11 d. after completing the above steps (a-c), but before you begin monitoring, sign the
12 attached certification.

13 A copy of the signed Application, Affidavit, Order, and Instructions will be posted in the wire
14 room at all times during the operation of the surveillance. No one should be in the wire room
15 without completing this certification. Moreover, only individuals involved in this wiretap should
16 be listening to conversations taking place over the **Target Telephone** as it is being monitored.
17 Finally, information received from this wiretap should not be disclosed to anyone outside of this
18 investigation.

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20 and activities that are specifically designated, while minimizing the interception of non-pertinent
21 or privileged communications and activities.

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24 communications through the use of electronic surveillance like any other search warrant: it
25 authorizes a limited search and a limited seizure of evidence. Any intercepted conversation,
26 whether or not it is recorded or otherwise preserved, is "seized" and subject to the limitations of
27 the Court's Order.

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INSTRUCTIONS
UNDER SEAL

1 4. The Court's Order will not allow you to freely intercept and listen to every
2 communication carried on over the Target Telephone. Minimization requires that the agents
3 make a good faith determination of whether any conversation is relevant to those illegal activities
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5 fruits of your investigation could be suppressed unless all the conversations were pertinent and
6 were not privileged.

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8 ensure that the Court can later review exactly what was intercepted, where and when
9 minimization took place, and whether or not the monitoring was conducted in accordance with
10 its Order, the interception equipment has been wired in such a way as to interconnect the
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12 it being automatically and simultaneously recorded. Conversely, you will not be able to record
13 any communication without it being automatically and simultaneously monitored. A single
14 switch will activate both interception and recording so that when you tie into a telephone line to
15 monitor a communication, you will have also activated the recorder. When you shut off the
16 switch to end your interception, the recording will cease at the same time. If for some reason we
17 must use machines that have a separate monitor switch, such switch is not to be activated unless
18 the machine is recording.

19 6. We have to be able to demonstrate that we neither listened to nor recorded
20 communications that we had no right to intercept. The original recording is our evidence of this.
21 For this reason, **no machine is to be left unattended or on automatic**.

22 7. However, if at any time a machine malfunctions or it becomes necessary to install
23 another CD while conversations are being intercepted, monitoring is permissible while the
24 situation is being remedied. Be certain to report any overheard or overseen but non-recorded
25 conversations in the interception log as accurately as possible, and to note the time, duration, and
26 nature of the malfunction or other reason for non-recording. Also, immediately inform the
27 Supervising Agent and the Supervising Attorney about the situation. In this case, your notes will
28 serve the function of the recording and must be carefully preserved.

1 COMMUNICATIONS WHICH MAY BE MONITORED

2 8. We have obtained authority from the Court to intercept certain wire
3 communications of the Target Interceptees which occur over the Target Telephone. The
4 communications we are authorized to intercept are those that relate to the following offenses
5 (hereinafter the "Target Offenses"):

6 (a) mail fraud and wire fraud, in violation of Title 18, United States Code, Sections
7 1341, 1343, and 1346;
8 (b) money laundering, in violation of Title 18, United States Code, Section 1956;
9 (c) violations of the Travel Act, in violation of Title 18, United States Code, Section
10 1952;
11 (d) conspiracy to distribute controlled substances, in violation of Title 21, United
12 States Code, Section 846;
13 (e) distribution of controlled substances, in violation of Title 21, United States Code,
14 Section 841;
15 (f) use of communication facility to commit or facilitate narcotics offense, in
16 violation of Title 21, United States Code, Section 843(b); and
17 (g) unlawful engaging in the business of dealing in firearms without a license, in
18 violation of Title 18, United States Code, Section 922(a)(1).

19 We are permitted by the Court's Order to intercept these wire communications to achieve the
20 goals of this investigation. These goals are as follows, to identify:

21 (i) the nature, extent and methods of operation of all of the Target Subjects'
22 scheme to commit the Target Offenses;
23 (ii) the identity of all of the Target Subjects' accomplices, aiders and abettors,
24 co-conspirators and participants in their commission of the Target Offenses;
25 (iii) the receipt and distribution of all contraband and money involved in the
26 Target Offenses;
27 (iv) the locations and items used in furtherance of the Target Offenses;
28 (v) the existence and locations of all records relating to the Target Offenses;
 (vi) the location and source of all resources used to finance the Target Offenses;
 and

1 (vii) the location and disposition of all of the proceeds from the Target Offenses.

2 9. You should listen to the beginning of each conversation for as long as, and only
3 for as long as, it is necessary for you to determine if one of the persons named above is a
4 participant and the conversation is pertinent to the subjects and activities targeted by the Court
5 Order, but in any case, usually no longer than a few minutes unless the conversation is pertinent,
6 that is, the conversation is within the scope of our authorization and not privileged. Title 18,
7 United States Code, Section 2518(5) requires that interception be done "in such a way as to
8 minimize the interception of communications not otherwise subject to interception." If you
9 determine that the conversation is not a criminal conversation, or is privileged, stop monitoring
10 and begin minimization. If you determine that the communication is pertinent, you will continue
11 the interception.

12 **MINIMIZATION / SPOT-MONITORING**

13 10. If you determine during the initial few minutes that a conversation does not fall
14 within the categories specified in the Order, that is, it is not pertinent, or that the conversation
15 falls within one of the privileges discussed below, the recording and listening devices must be
16 turned off.

17 11. However, it is possible that some time after the machine is turned off, the
18 conversation will regard the illegal activities listed herein, or that the conversation will cease
19 being of a privileged nature. To guard against missing a pertinent conversation, spot monitor,
20 that is, check by activating the monitor and record switch periodically to determine if the nature
21 of the conversation has changed so that it has become pertinent. Listen, observe, and record for a
22 brief period, only as long as is necessary to determine whether the conversation has become
23 pertinent. This procedure of spot-monitoring may be continued throughout the conversation, but
24 should be kept to the minimum necessary to ascertain whether the conversation has changed. If,
25 during this brief period of spot-monitoring a pertinent conversation is intercepted, keep listening
26 and recording. If a non-pertinent or privileged conversation is intercepted, turn off the machine.
27
28

1 You must record the conversations which are overheard even during the brief periods of
2 interception that occur during the spot monitoring.

3 12. Continue the spot monitoring as the circumstances dictate. In determining
4 whether and when to continue spot interceptions, use your best judgment and the circumstances
5 known to you, such as the identity of the parties to the conversation, the nature of their
6 relationship and past conduct, the presence of any code words, their known current activity, etc.
7 Here are some guidelines to help you do this.

8 a. Patterns of Innocence:

9 If after several days of interception, we have consistently found that
10 communications involving a Target Interceptee and a particular person are
11 innocent, non-pertinent, or non-crime related, then a pattern of innocence
12 exists and such conversations should be minimized once the parties are
13 identified but such conversations should also occasionally be spot-
14 monitored as described above.

15 b. Patterns of Involvement:

16 On the other hand, if one or more of the parties to a conversation has been,
17 through the course of the investigation, identified as a co-conspirator,
18 accomplice, agent, or victim of the Target Interceptees or criminal
19 activities, and the communication is not privileged, a pattern of
20 involvement in the illegal activity is established. Once the pattern of
21 involvement has been set, you should let the supervising agent or attorney
22 know, and have them review the need for minimization when the involved
23 party has been identified as a participant to any conversation.

24 With respect to electronic communications in particular (i.e. text messages), all
25 monitoring of electronic communications will be conducted in accordance with Chapter 119 of
26 Title 18, United States Code. Each text message will be reviewed over a secure system, and
27 based on the identities of the sender and recipient and the content of the message, monitoring
28 personnel will determine as soon as practicable after interception whether the text message
appears to be relevant to the investigation or otherwise criminal in nature. If the message is not
criminal in nature, the message will be marked "minimized" and not accessed by other members

1 of the investigative team. If the message appears to be privileged, it will be marked “privileged”
2 and secured from access by other members of the investigative team. If a text message appears to
3 be relevant to the investigation or otherwise criminal in nature, it will be marked
4 “non-minimized” and may be shared with the other agents and monitors involved in the
5 investigation. If a text message is marked “minimized” or “privileged,” it will not be
6 disseminated to members of the investigative team. All intercepted text messages will be sealed
7 with the court upon the expiration of the court’s order authorizing the interception. It is
8 anticipated that the monitoring location will not be staffed at all times, but will be staffed at
9 regular hours, at which time intercepted communications will be monitored and read (including
10 those intercepted at hours when the location was not staffed). However, even when unmanned,
11 the monitoring location will be kept secured with access limited to only authorized monitoring
12 personnel and their supervising agents.

COMMUNICATIONS IN FOREIGN LANGUAGES

13. We believe that some of the communications you monitor may be in a foreign language. When communications in a foreign language are intercepted, we are under exactly the same obligation concerning minimization regardless of whether or not a particular government agent speaks or understands the language being used. If you determine that the communication is in a language in which you are not fluent, immediately notify the supervising agent.

14. Because it appears that conversations in Cantonese may be intercepted, efforts have been made to obtain Cantonese-speaking monitors to assist in the surveillance. If a Cantonese translator is reasonably unavailable to minimize communications on the spot, all such conversations should be intercepted and recorded in their entirety. These conversations must then be minimized as soon as practicable by a translator. Specific instructions are contained in both the Application and the Court Order.

EVIDENCE OF OTHER CRIMES

15. We do not have authorization to intercept communications concerning the commission or planning of crimes other than those defined above as illegal activities. Our

1 authorization is limited to the interception of conversations between our named Target
2 Interceptees and co-conspirators, accomplices, agents, or victims, concerning the illegal activities
3 defined above. In the event, however, that while you are listening to a pertinent conversation or
4 attempting to determine whether a given conversation is pertinent, you intercept a conversation
5 involving another serious crime – for example, assault, robbery, homicide, or hijacking – listen to
6 and record that conversation. It is similar to the “plain view” doctrine which applies in the
7 execution of search warrants. If you do monitor such a conversation, notify the Supervising
8 Agent and Supervising Attorney immediately.

CONVERSATIONS IN WHICH OUR NAMED INTERCEPTEES ARE NOT PARTICIPANTS

11 16. No interception is to be conducted unless it is determined through video
12 surveillance, physical surveillance, voice identification, or otherwise that at least one of the
13 named Target Interceptees or any of their co-conspirators, once identified, are a party to the
14 conversation for which authorization has been obtained. We have authority to intercept pertinent
15 conversations in which our Target Interceptees are not participants because we do not know and
16 have not identified all the people who use in connection with the illegal activities. For example,
17 if Keith JACKSON and Senator Leland YEE are overheard stating that a third person paying a
18 bribe will be calling over a **Target Telephone** in a moment, and they plan to hand the **Target**
19 **Telephone** to a new individual who will assist in funneling the bribe to Senator YEE's accounts,
20 and then the two new individuals begin a conversation over the **Target Telephone** while
21 JACKSON and Senator YEE no longer participate in the conversation, you are authorized to
22 continue to monitor the conversation of the now identified co-conspirators. However, you are to
23 notify the Supervising Agent and Supervising Attorney so that appropriate modifications can be
24 made in the applications and orders. You must be extremely careful, however, when intercepting
25 conversations in which a named Target Interceptee is not a participant, to avoid intercepting
26 non-pertinent conversations. It is important that you attempt to identify the named interceptees
27 of this interception and, as well, to identify other individuals who may use the **Target**

1 Telephones so that the patterns of innocence and involvement mentioned earlier can be
2 recognized and our monitoring may be adjusted in accordance with them.

3 IDENTIFICATION OF NEW SUBJECTS

4 17. One of our stated and authorized purposes in conducting this investigation is to
5 identify our Target Interceptees' co-conspirators, accomplices, agents or victims involved in the
6 Target Offenses. As the surveillance progresses, it is likely that you will be able to identify new
7 subjects who function as co-conspirators, accomplices, agents, or victims in the Target Offenses.
8 As soon as any such individual is identified, the Supervising Agent and Supervising Attorney
9 should be notified immediately.

10 PRIVILEGED COMMUNICATIONS

11 18. There are special restrictions relating to any communications which would fall
12 under any legal privilege. The general categories of privileged communications are discussed
13 below. If you determine that a conversation is privileged, stop intercepting immediately, but
14 spot-monitor to see if the conversation remains privileged. If you decide that a conversation is
15 not privileged, treat it as a regular interception and apply the above minimization instructions. If
16 you mistakenly overhear a privileged conversation, you should notify the Supervising Agent and
17 Supervising Attorney. You should not pass on the content of the conversation, only pass on the
18 circumstances of the mistaken interception.

19 a. Attorney-Client

20 It is unknown at this time whether any of the subjects are currently being
21 represented by an attorney. If at any time during the investigation we learn the
22 name of any attorney retained by any possible subject, these names are to be
23 posted in a conspicuous place in the listening post. Any time that it is determined
24 that an attorney is participating in an intercepted conversation over the **Target**
25 **Telephone**, call the Supervising Agent and Supervising Attorney immediately. If
26 the conversation involves legal consultation of any kind or any sort of discussion
27 of legal strategy, immediately turn off the monitor and stop recording. However,
28 do not summarize this conversation in the log and, again, you should only pass on

the circumstances of the mistaken interception, not the content of the conversation. Rather, you should write the content of what you mistakenly overheard, not in the log, but on a separate piece of paper titled "Attorney Communication," and give this paper, in a sealed envelope, to the Supervising Agent who, in turn, is to give it to the Supervising Attorney.

b. Parishioner-Clergyman

All communications between a parishioner and his or her clergyman are to be considered privileged. We could not obtain an interception order to listen to a person confessing to a priest in a confessional booth; similarly, we must not intercept a subject discuss his or her personal, financial, or legal problems with his or her priest, minister, rabbi, etc. Thus, if such a communication is intercepted over the **Target Telephone**, turn off the monitor and stop recording. Then call the supervising agent and attorney. However unlikely, if the conversation reasonably leads you to conclude that the clergyman is acting as a co-conspirator or accomplice, the conversation is not privileged and may be monitored in full.

c. Husband-Wife

There is also a privilege concerning communications between spouses. You are to discontinue monitoring if you determine that you are intercepting a personal communication over the **Target Telephone** solely between a husband and wife. If it appears that a third person is present during the communication, however, the communication is not privileged. Also, if the communication does not deal with private matters between a husband and wife, but instead with ongoing (as opposed to past) violations of law, it is not a privileged communication.

d. Physician-Patient

Conversations between a physician and patient are to be considered privileged.

1 You are to stop intercepting a communication once you determine that it is a
2 communication between a physician and patient that arises out of their
3 professional relationship. Then notify the supervising agent and attorney. Again,
4 if you decide that the doctor is acting as a co-conspirator, or accomplice, the
5 conversation is to be treated like any other intercepted communication.

6

7 e. Psychiatrist-Patient

8 Conversations between a physician, psychiatrist, psychotherapist, psychologist,
9 and even a social workers functioning in that capacity, are to be considered
10 privileged.

11 You are to stop intercepting a communication once you determine that it is a
12 communication between a psychiatrist and patient that arises out of their
13 professional relationship. Then notify the supervising agent and attorney. Again,
14 if you decide that the psychiatrist is acting as a co-conspirator, or accomplice, the
15 conversation is to be treated like any other intercepted communication.

16

17 f. Other Relationships

18 No legal privilege exists with regard to communications between a subject and his
19 or her lover, unless they are married. Similarly, no legal privilege exists with
20 regard to conversations between a subject and his or her children or relatives.
21 Keep in mind, however, that our function is to intercept and record conversations
22 related to illegal activities, not indiscriminately to invade the privacy of our
23 subjects and others. In general, follow the spot-monitoring rules outlined above,
24 if conversations of this type are intercepted.

25

26 NON-PRIVILEGED COMMUNICATIONS

27

28 19. Even if a communication does not fall within one of the privileged categories

1 discussed above, that does not automatically mean that we have a right to listen to and record the
2 entire communication. We have authority to intercept only those communications which pertain
3 to the Target Offenses of the named Interceptees and their unknown associates. Always
4 remember that eventually a court may have to decide whether we executed the interception Order
5 in the manner specified by the Order. The standard which a Court is likely to apply in
6 determining whether the interception was properly carried out is simple: Did the agents make a
7 good faith effort to comply with the restrictions and requirements of the wiretap Order?

"... a court should not admit evidence derived from an electronic surveillance order unless, after reviewing the conduct of the monitoring agents, it is left with the conviction that on the whole the agents have shown high regard for the right of privacy and have done all they reasonably could to avoid unnecessary intrusion."

United States v. Tortorella, 480 F.2d 764, 784 (2d Cir. 1973).

"... the monitoring agent and thereafter the reviewing court must consider many factors, including the precise relationship of the parties, the length of the relationship, the number of [conversations] between the parties, the state of the investigation, activities, at the time, of the alleged conspirator who is a party to the conversation, and the content of the conversations to determine the appropriate degree of minimization."

United States v. Falcone, 364 F. Supp. 877, 884 (D.N.J. 1973)

20. You must be alert to the possibility that you may intercept conversations in which defendants in ongoing criminal prosecutions are discussing the facts of their cases. You are only entitled to intercept conversations about ongoing criminal cases if they are pertinent to ongoing criminal activity (*i.e.*, criminal conversations) and non-privileged – just as you may intercept any other pertinent, non-privileged conversation. You are not to monitor and record any discussion concerning a legal defense or strategy that may be discussed by a subject or other interceptee.

21. However, you should also realize that we must be very careful how we use any information which we obtain from such conversation. Specifically, such information may not be used against a particular defendant in his pending criminal case either directly (as evidence) or indirectly (as leads to obtain evidence). None of the subjects are currently under federal indictment; however, should you intercept a conversation in which a defendant is discussing the facts of a pending criminal case, call the Supervising Agent and Supervising Attorney and advise

1 them of the nature and substance of the conversation. Do not, under any circumstances,
2 communicate the substance of the conversation to any prosecutor, agent, police officer, or other
3 government officer who has any connection with the prosecution or investigation of that
4 defendant's pending criminal case.

5 SEALING

6 22. You should be aware that the federal statutes which empower District Courts to
7 issue interception orders also place upon us the obligation to record intercepted conversations in
8 a manner that will protect the recordings from editing or other alterations. It is our responsibility
9 to make available to the judge who issues the interception order all of the recordings of the
10 intercepted conversations which are then to be placed under judicial seal. Failure to carry out
11 these responsibilities may result in the suppression of the recordings as evidence. The
12 Supervising Agent has adopted procedures to preserve the chain of custody of the original
13 recordings and to prepare accurate duplicates. The Supervising Agent will instruct all
14 monitoring agents according to those procedures.

15 RECORD KEEPING

16 23. Agents or monitors are to prepare abstracts or summaries of each conversation at
17 the time of interception. The abstracts or summaries are to be included in the monitoring
18 logs/line sheets. If the conversation was not entirely recorded, an appropriate notation should be
19 made indicating the incomplete nature of the conversation (e.g., interception discontinued) and
20 why the full communication was not intercepted (e.g., non-pertinent or privileged). Where the
21 exact words used by the participants are important, a transcript of that portion of the conversation
22 should be prepared as soon as possible thereafter and delivered to the Supervising Agent shortly
23 thereafter.

24 24. The line sheets/logs are to be a reflection of all activity occurring at the listening
25 post which concerns the intercepted conversations, as well as the equipment itself (e.g.,
26 malfunction of recorder, no overheard conversations). You will ultimately use these logs to
27 explain actions you took with respect to particular communications. Therefore, it is vitally
28 important that you describe/identify:

- 1 a. the parties of each conversation (name or UM, UF, etc.);
- 2 b. the beginning and ending time of any conversations (in order to avoid
- 3 confusion regarding "A.M." and "P.M.", please use "military time" - that
- 4 is, a continuous 24-hour period of time ranging from 0000 to 2400);
- 5 e. whether or not the conversation is pertinent; and
- 6 f. if the conversation is not pertinent, indicate whether or not it was
- 7 minimized and whether spot-monitoring used.
- 8 g. In the area reserved for "synopsis":
 - 9 (i) if a conversation is privileged, indicate the basis for your
 - 10 determination and type of privileged involved.
 - 11 (ii) provide summary of conversation (e.g., discussed cocaine delivery,
 - 12 talked about price and place of delivery). If only part of the
 - 13 conversation was monitored, indicate why this was done. If you
 - 14 can identify the speakers by name, please do so. If you believe you
 - 15 know the identify of the speakers, but are not positive, write the
 - 16 name followed by a question mark.

LENGTH OF INTERCEPTION

17
18 26. The Court authorized the interception of wire communications over the **Target**
19 **Telephone** for a period of 30 days. The Court's Order is expected to be signed today, November
20 13, 2012, and interception is anticipated to start tomorrow, November 14, 2012. If interception
21 indeed begins on November 14, 2012, then interception must end on December 14, 2012. If
22 interception does not begin on November 14, 2012, the ending date will be recalculated. In any
23 event, no communications should be intercepted after the 30 day period without a renewal and
24 extension of the Court's Order.
25

QUESTIONS

26 27. If anything appears to be developing suddenly, or if a critical question arises,

1 please call me, AUSA William Frentzen at [REDACTED] (desk) or [REDACTED] (mobile).
2 You may also call AUSA S. Waqar Hasib, at [REDACTED] (desk) or [REDACTED] (mobile),
3 or AUSA Susan Badger at [REDACTED] or [REDACTED] (mobile). These numbers
4 will be posted in the wire room. Do not hesitate to call any of us at any time of the day or night.

5
6 DATED: February 8, 2013

7 MELINDA HAAG
United States Attorney

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9 WILLIAM FRENTZEN
Assistant United States Attorney

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